IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 16064 of 2004

Between:

Superintending Engineer, TLC Circle,
Andhra Pradesh Transmission Corporation, Yerramukkapalli,
Kadapa .

..... PETITIONER

AND

The Assistant Provident Fund Commissioner, Sub Regional Office,
1/30, R.S. Road, Cuddapah - 516 004

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an Order or Direction or a Writ more particularly one in the nature of Writ of Mandamus, restraining the respondent in giving effect to his proceedings No. AP/CP/43237/CDP/ENF/SRO/CDP/2004-05/5619, dated 30-8-2004

Counsel for the Petitioner: MR.S.RAVINDRANATH

Counsel for the Respondent No.: MR.R.N.REDDY

The Court at the stage of admission made the following ORDER:

When the writ petition is taken up for admission, the learned counsel for the petitioner submits that without issuing summons and examining the Contractor, who engaged the employees, the respondent cannot fix up the liability on the principal employer. In view of the law declared by Apex Court in **Food Corporation of India v. Provident Fund Commissioner,** which was followed by this Court in W.P.No.24209 of 2003 dated 03.12.2003, the assessment order passed under Section 7A of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 (for short 'the Act') is liable to be set aside.

The learned Standing Counsel contends that issuance of notice to the Contractor does not arise since the employees of the petitioner appeared before the Assistant Provident Fund Commissioner and produced the list of Contractors and wages paid to the employees engaged by them and basing upon the information furnished with regard to the wages, the dues of Provident Fund have been determined. If the petitioner is aggrieved by the assessment made by the respondent, it is open to it to file an appeal before the Tribunal.

In view of the same, petitioner is permitted to file an appeal before the Appellate Tribunal within a period of two weeks from today. Since the Appellate Tribunal is not functioning, the writ petition is disposed of, on condition of the petitioner depositing 50% of the amount demanded by the respondent within a period of two months from the date of receipt of a copy of this order the impugned order shall not be enforced till the disposal of appeal. The petitioner on producing such deposit before the Appellate Tribunal, the Appellate Tribunal without insisting for depositing 75% of the amount for entertaining the appeal, may consider the appeal and dispose of according to law. The amount so deposited will be subject to the orders passed in the appeal. No costs.

A. **Gopal Reddy, J**

Date: 09.09.2004

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To

1. The Assistant Provident Fund Commissioner, Sub Regional Office,
   1/30, R.S. Road, Cuddapah - 516 004

2. Two CD Copies